



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

Mr. Michael R. Davis
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0516

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30880.

The Department of Public Safety (the "department") received an information request seeking "records relating to any and all accidents that have occurred on the premises of any DPS office in the State of Texas." Subsequent to this request, the requestor asked for information concerning accidents that occurred between June 7, 1991 to the present in the Harris County area only. You assert that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You have submitted a representative sample of the documents responsive to the request for information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party, and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a). Section 552.103(a) requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You state that in this instance the department received "a claim for personal injuries arising out of a slip and fall accident sustained by Mary Ballard while on DPS premises in Houston." You state that you have rejected the claim. You also explain that the allegedly injured party has hired an attorney. This attorney has notified you that they will represent the allegedly injured party in the premises liability suit against the department. We conclude that litigation is reasonably anticipated under these circumstances.¹

A governmental body seeking to withhold information under section 552.103(a) must also show why and how the requested information relates to the subject of the litigation. Open Records Decision Nos. 638 (1996), 551 (1990) at 4. We conclude that the records concerning the alleged "slip and fall accident sustained by Mary Ballard while on DPS premises in Houston" are related to anticipated litigation. These documents may be withheld.² You have not, however, demonstrated how the other requested documents

¹This office has recently issued Open Records Decision No. 638 (1996). Under Open Records Decision No. 638, a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act or applicable municipal statute or ordinance.

In the future, therefore, if you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the Texas Tort Claims Act or applicable municipal statute or ordinance.

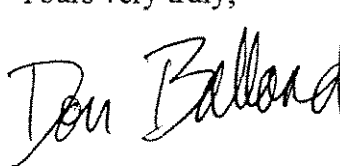
²We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be released.

In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

reasonably relate to the anticipated litigation. You have not met your burden under section 552.103(a) as to this information; therefore, you cannot withhold the remaining requested information pursuant to section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/rho

Ref.: ID# 30880

Enclosures: Submitted documents
Confidentiality list

cc: Mr. Booker T. Morris, III
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(w/Confidentiality list)
